

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

KAREN L. STRAUSS)	CASE
et al., Petitioners,)	NO.
)	S168047
Plaintiff,)	
vs.)	
)	
MARK B. HORTON et)	
al, State Registrar of)	
Vital Statistics, etc.,)	
Respondents;)	
DENNIS)	
HOLLINGSWORTH et)	
al., Intervener)	

Defendants.

**APPLICATION OF SAMUEL RODRIGUES FOR LEAVE
TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF
RESPONDENTS**

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APPLICATION TO FILE AMICUS BRIEF

To the Honorable Ronald M. George, California Supreme Court Chief Justice:

Pursuant to Rule 8.520(f) of the California Rules of Court, *amicus*, Samuel Rodrigues, respectfully requests leave to file the attached brief of *amicus curiae* in support of all Respondents. This application is timely made pursuant to the Court's orders of November 19, 2008 permitting such briefs on or before January 15, 2009.

Interest of Amicus Curiae

The proceeding addresses the issues of whether or not this is a case of discrimination, which is prohibited by the Constitution of California, and if the people have the right to define for themselves what they wish to call the ancient sacred union of marriage. The sole interest of *amicus* is to inform the Court of issues that have been overlooked by the Petitioner and the Respondent. *Amicus* sees it as its duty to address these issues properly so that the Court may be well informed and therefore, capable of making a wiser decision.

This application of Samuel Rodrigues respectfully shows:

1. Applicant is not a party to the case but has the sole interest of presenting facts to this court which have not been properly addressed by either party.
2. Applicant's proposed brief, in summary, sets forth the following facts and questions of law that have not been adequately been presented by the parties:

- A. Nothing in Proposition 8 is discriminatory and no rights were infringed by its enactment;
- B. The purpose of Proposition 8 was to acknowledge that marriage is a right granted unto those who meet the specific requirements, such as many other rights, a concept that has not only been accepted since the beginning of time, but since the beginning of this nation as well;
- C. Claims that Proposition 8 violates Article II Section 8 of the California Constitution are without basis, and;
- D. The people exercised their right to amend the Constitution by initiative and a new amendment overrides anything in the Constitution prohibiting it.

3. The facts and questions of law in Applicant's proposed brief are relevant to the disposition of this case because they have been overlooked and are core issues in this case. They deal with misinterpretations of the law and the Constitution of the state of California.

WHEREFORE, Samuel Rodrigues respectfully requests leave to file a brief as amicus curiae in the above-entitled cause.


_____ [signature]

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Respectfully submitted,

_____ [date]

ORDER

The application of Samuel Rodrigues for permission to file a brief as amicus curiae having been read and filed, and good cause appearing therefor,

IT IS HEREBY ORDERED that Samuel Rodrigues be, and hereby is, permitted to file a brief as amicus curiae herein.

Dated: _____.

_____ [signature]

_____ Chief Justice

BRIEF OF AMICUS CURIAE SAMUEL RODRIGUES IN SUPPORT OF RESPONDENTS

INTRODUCTION

The petitioners claim that the establishment of Proposition 8 is a revision and not an amendment: Nowhere in the amendment does it classify that gays and lesbians “cannot marry”, therefore it cannot be a revision. The petitioners, deep pocketed activists, part of a movement that for years now have been using camouflaged scenarios of equal rights to gain grounds for their movement which has for years tried to reframe society into validating and endorsing homosexuality in our society; with no respect to anyone, using whatever efforts possible to accomplish their means. In such a scenario even great men of understanding can find themselves joining hands without noticing. A stream of legislature activists and now court activists have emerged and have managed to create chaos and violating their powers in an attempt to validate and endorse and force into the large majority of society equality of gays and lesbians, attempting to reinstruct society in a frame of mind that man plus man is equal to man plus woman and woman plus woman is equal to man plus woman, forcing an entire society to validate, accept, and endorse, that a same sex couple is equal to an opposite sex couple; opening a Pandora’s box of terminology, such as suspect classification, sexual orientation, labeling, progressive civil rights protection trying to substantiate legal rights to gay couples. Even great minds of great men sitting in the highest courts, legislations and government positions have been blindfolded and have failed to uphold the largest evidence of a document which has been for centuries established to classify what is a man and what is a woman. If the activist’s scenarios were not played in these issues, it would not be difficult to clearly see that equal rights are already given unequivocally to both sexes, in fact a man is a man and is not equal to a woman and that the absence of one sex cannot be replaced by the presence of the other sex.

ARGUMENT

I. IS PROPOSITION 8 UNCONSTITUTIONAL BECAUSE IT CONSTITUTES A REVISION OF, RATHER THAN AN AMENDMENT TO, THE CALIFORNIA CONSTITUTION?

A. PROPOSITION 8 DOES NOT CONSTITUTE A REVISION BECAUSE IT DOES NOT ELIMINATE ANY RIGHT BASED ON SUSPECT CLASSIFICATION.

It is apparent that the petitioners and those behind them have had great success in their efforts to mask and disguise the issue at hand by loudly crying discrimination and intolerance and in doing so have gained the attention of an entire nation. However, the mere fact that discrimination is even an issue at the moment is flawed in its entirety. In the state's best interest, the people have voted to amend the state constitution section regarding the declaration of rights and in thus doing have merely clearly defined what marriage is: between a man and a woman. Every gay man is a man and every gay woman is still a woman, and nowhere does this amendment have an effect on them being allowed to marry. A gay man can marry a woman who fits the criteria for marriage being herself gay or not. Society in its entirety is comprised of man and woman. A certificate of birth acknowledges this fact when a citizen is born. What a person wishes to classify themselves later in their life is irrelevant to this predetermining fact that society is made up of men and women, nothing more and nothing less. That is the equality granted to all citizens. How a person orients themselves may change and alter infinitely through their lifetime but the immutable fact remains that they are a man or a woman, unless otherwise born with a genetic disorder syndrome. Suspect classification is NOT founded for gays and lesbians because their class as enlisted per de facto certificate of birth are isolated as per such all rights as man and woman are irrevocably theirs; suspect classification on basis of sexual orientation cannot at any time allow them to subsidize politically and therefore claim vulnerability. It's obvious that their need in this eager momentum of such a wrongful movement requires them to claim political vulnerability; it is nothing

more than a well engineered move to capitalize themselves in a camouflaged scenario of civil rights.

The de facto truth is that a birth certificate defines a man and a woman by the sexual organs they are born with. The de facto truth of a birth certificate cannot be changed by the mere fact that one orients themselves differently. Therefore they are not and cannot be equal. Therefore, same sex couples and opposite sex couples are not the same. For the de facto truth, the birth certificate labels a class of citizens even prior to birth in the womb of the woman, carrying the sexual organs they label a man and a woman the de facto birth certificate precedes and stands on its own merit to this court. Sexual orientation can never and will never supersede the de facto true birth of an individual. Petitioners cannot claim that the amendment excluded rights to same sex couples because a gay man can marry a gay woman. Petitioners cannot cry equal protection because the de facto birth certificate supersedes the suspect classification of sexual orientation. Petitioners cannot cry fundamental constitutional right to marry and be labeled as marriage which has been for ages throughout the existence of man been between a man and a woman. Petitioners cannot cry fundamental rights demoralizing the legitimacy of a birth certificate in trying to be the same as a man and a woman. Because the de facto true birth certificate explicitly defines "sex" as different and not equal only activist legislatures and activist courts would violate the de facto birth certificate at hand and break new ground to equalize the sex description at the time of birth. In an attempt to force the majority of the people to embrace same sex marriage as the same as opposite sex marriage, activist legislators and activist courts are at a stand still effort to continue to undermine and trample over the basic fundamental principle of birth existence to validate and endorse homosexual conduct with the label of marriage to an entire society of young and tender aged children, forcing individuals (adult parent) to also validate and endorse the same to the children with no justification for the conduct not conducive with the certificate of birth. On the basis that young and tender aged children must be protected,

higher courts and legislations have been enacted to not allow other matters related to sexual conduct, such as incest, polygamy, and the opening of pornography and sexual materials to the children. Moreover, activist legislators and courts have failed to scrutinize homosexual conduct under the same guidelines of other relationships based on sexual conduct such as incest and polygamy, when they should have; homosexual conduct has the same potentially detrimental effect to children in a sound family environment as the latter relationships; one cannot separate the word homosexual, lesbian, gay, etc., from the sexual act that they portray, when you say the word you are describing the sexual conduct act which uses other members of the human body to replace the sexual organs of the opposite sex lacking in the act; an act that in itself is based solely on achieving sexual pleasure and by not having both sexes present is incomplete and cannot be considered a full sexual intercourse and never open to the transmission of new life. Previous legislations have in the past taken down tobacco billboards on the belief that it entices children to smoke, taken down the “Budweiser Frog” on the account that it entices children to drink, and because of the desire to reshape considerably our nation’s culture, have legislated to embrace and validate gay and lesbian relationships as if they were one in the same as that of one man and one woman. The labeling of the word marriage falls hand in hand throughout the ages of civilization with the de facto birth certificate of a man and a woman that are not one in the same for the sexual conduct of gay and lesbians and can never be.

Petitioners claim that Proposition 8 is invalid because it seeks to eliminate inalienable rights based on suspect classification is completely flawed. The right to marry is the same as it has always been, Proposition 8 has not eliminated anyone from being married as long as the marriage criteria is met, one criteria of being a man and a woman. A gay man is still a man and a gay woman is still a woman. According the Proposition 8 they can still marry as they have been able to since marriage was instilled in our society. The principles of non-

discrimination cannot be invoked to support legal recognition of homosexual unions. Differentiating between persons or refusing social recognition is unacceptable only when it is contrary to justice. The denial of the social and legal status of marriage to forms of cohabitation that are not and cannot be marital is not opposed to justice; on the contrary, justice requires it. This court has ruled that gay individuals are entitled to the same legal rights as well as the same respect and dignity afforded to all individuals, and as individuals they are and with that, they have the same right to marry another individual of the opposite sex. But fact of the matter remains that a relationship between two persons of the same sex is not the same as a marriage relationship between a man and a woman, regardless of the petitioners claim. Homosexual unions are totally lacking in the biological and anthropological elements of marriage and family which would be the basis, on the level of reason, for granting them legal recognition. To define them as the same would be to alter marriage into something it is not, into something different and marriage itself will have become lost and void concerning its purpose; therefore it is not in society's best interest, especially to the children. It would be gravely unjust to sacrifice the common good and just laws on the family in order to protect personal goods that can and must be guaranteed in ways that do not harm the body of society.

As experience has shown, the absence of sexual complementarity in homosexual unions creates obstacles in the normal development of children in the care of such persons in an environment not conducive to their full human development. They would be deprived of the experience of either fatherhood or motherhood. Regardless of how hard the individual may act to try to replace the presence of the opposite sex, it is impossible to do so. Even the possibility of using recently discovered methods of artificial reproduction, beyond involving a grave lack of respect for human dignity, does nothing to alter this inadequacy. The idea that same sex relationships deserve the same level of recognition and

status is mediocre and undermines society in a whole and does not contribute to its better development. This is in open contradiction to the principle, recognized also in the United Nations Convention on the Rights of the Child, that the best interests of the child, as the weaker and more vulnerable party, are to be the paramount consideration in every case. Homosexual couples do have relationships and do show commitment to each other but contrary to the court's belief it does not "serve as the foundation of a family and responsibly caring for and raising children." (In re Marriage Cases, 2008).

B. EVERY RIGHT HAS CERTAIN LIMITATIONS WHICH CANNOT BE IGNORED

They claim marriage is a civil right and that they have the right to marry anyone they love, but this is not the case. There are several rights that have limitations. The people have the right to bear arms but the government can limit who can bear arms and which ones they can bear. The freedom of speech and assembly is a guaranteed right in the First Amendment but there are limits as to when and where you can assemble. Even our most fundamental right, the freedom of religion, is subject to review and has its limitations as well (Cal. Const., art I § 4).

Marriage, as with all rights, has its natural limitations and boundaries. The law already extensively governs this union and many people are not allowed to marry. In Section 285 of the California Penal Code, we read "Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison". Here, the act of knowingly marrying a person who has the same blood line as your own is a crime that must be punishable by imprisonment. Another commonly known restriction on marriage is bigamy. Bigamy is a crime and is defined in Section 281 (a) of the California Penal Code, as follows "Every person having a husband or a wife living, who marries another


person, except in the cases specified in Section 282, is guilty of bigamy.” Section 282 is the only exception and that states that if the marriage has been voided or annulled, then the person is not committing bigamy. Section 283 sets forth the punishment for bigamy as being punishable by a fine of up to ten thousand dollars or up to a year in a county jail. The punishment of the one marrying the bigamist is even more severe according to Section 284, calling for up to five thousand dollars or imprisonment in a state prison. Thus we see how not all marriages are accepted in California and how marriage, like many other rights, are subject to certain limitations. Further, if marriage is to be freely allowed as the petitioners request, then justice would require the restrictions and limitations of marriage to be removed entirely and incest, bigamy, underage marriage, indeed every possible and imaginable form of relationship would need to be called marriage and be allowed to do so, and such according to this court, the promise of “equal liberty” would be ignored and “absolute liberty” (Max Factor & Co. v. Kunsman (1936) 5 cal.2d 446, 458.) would be allowed.

CONCLUSION

It is a covenant of this court to protect the people, the children, the democracy and above all the right of this amendment to secure the validity of the authority of the state birth certificate of California which validates the sex of a man and a woman. In validating, it separates them as one different and not the same. Sexual orientation cannot in fact alter the de facto certification of the birth certificate that citizens are a class and are already defined by its certification as man and woman. It is apparent that the relevant issue of this case lies in the authoritarian certification of the definite class of issuance of a man and a woman with irrevocable rights even with different orientation. Further, the claim that rights have been taken away, as the brief explains is flawed, and the amendment does not fall under a revision because a gay man or gay woman has not lost their right to marry.

RULE 8.204(C)(1) CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I Samuel Rodrigues certify is proportionally spaced, has typeface of 13 points, and contains 2,556 words, excluding the table of contents and certificate of compliance, as calculated by using the word count feature in Microsoft Word.



Samuel Rodrigues

PROOF OF SERVICE
F.R.C.P.5 / C.C.P.§ 1013a(3)/ Cal. R 2.260

On **January 15, 2009**, I served the following listed document(s), by US Postal Service on the parties in this action: **AMICI CURIAE BREIF OF SAMUEL RODRIGUES IN SUPPORT OF RESPONDENTS**

SEE ATTACHED SERVICE LIST

I Declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Executed on January 15, 2009 at San Francisco, California.

Samuel Rodrigues

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